

Appl. No.: 10/072,509  
Amdt. dated August 1, 2003  
Reply to Office Action of March 3, 2003

Patent  
14363-0053

### **REMARKS**

Applicant thanks the Examiner for the careful attention given the application in the previous Office Action and for the correction of the claim numbering and dependencies indicated therein. Claims 18-35 of the present application are currently pending. In the Office Action mailed March 3, 2003, claims 18-35 have been rejected. Several claims have been amended for the purpose of clarification. For the reason set forth below, the Applicants respectfully traverse the rejections and submit that all pending claims are in condition for allowance and allowance of the application is respectfully requested.

### **Rejections under 35 USC §103**

In the Office Action dated March 3, 2003, claims 18-23 and 25-27 were rejected under 35 U.S.C. §103(a) as being unpatentable over the article entitled "Barium-Impregnated Fibrin-Glue: Application to a Bleeding Duodenal Sinus," authored by McCarthy et al. (hereinafter McCarthy). In addition, claims 24 and 28-35 were rejected under 35 U.S.C. §103(a) as being unpatentable over the McCarthy reference in view of United States Patent No. 4,874, 368, issued to Miller et al. (hereinafter Miller).

The previous Office Action states that McCarthy discloses a double lumen catheter used for injection of thrombin and fibrinogen component of fibrin glue and that the catheter fits into the side port of an endoscope. The Office Action also states that it is well known that endoscopes have suction lumens that are used to clean and clear the surgical area of interest before and after the treatment so the doctor can see the area that the surgical procedure is being performed and clean up any debris when they are finished or remove excess material during a procedure. Further, the Office Action states that it would therefor have been obvious to one of ordinary skill in the art to utilize an endoscope with a suction lumen wherein the double lumen fibrin glue dispensing catheter is positioned within the tool lumen as taught by McCarthy, in order to provide the doctor the proper visualization of the work area within the body of the patient and to

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make sure the surgical site is clean of debris and excess material when the procedure is finished.

Applicant respectfully traverses the rejection of claims 18-23 and 25-27 under 35 U.S.C. §103(a) over McCarthy. Although an Examiner may take official notice of facts outside the record which are capable of instant and unquestionable demonstration as being well known in the art, this must be presented with a clear and convincing line of reasoning. MPEP 2144.03. Applicant is unable to determine from the language of the Office Action whether the Examiner is suggesting that the device of McCarthy could be modified to include a suction lumen or whether an endoscope having a suction lumen could be substituted for that in the McCarthy reference. McCarthy neither teaches or suggests the use of suction or a need to clean a surgical site of debris or excess material. As such, Applicant respectfully requests that the Examiner cite a reference or provide an affidavit in support of the assertions above for clarification of the record.

Regardless of how the Examiner's statements of common knowledge in the previous Office Action are interpreted, in order to establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all the claim limitations. (see MPEP §2143.03). The motivation to combine or modify a reference in order to make a rejection must be found within the prior art and not based on applicant's disclosure. As stated above, there is no teaching or suggestion in McCarthy directed to the use of suction or the step of applying suction in conjunction with the application of an adhesive to a work surface. As such, claims 18-23 and 25-27 are allowable over McCarthy.

Claims 24 and 28-35 stand rejected under 35 U.S.C. section 103(a) as being unpatentable over McCarthy in view of U.S. Patent No. 4,874,368 to Miller (Miller). The previous Office Action states that McCarthy teaches all claimed subject matter except

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for the two components being mixed prior to exiting the device. The Office Action further states that Miller teaches a fibrin glue delivery system wherein the two components mix before exiting the device. However, after careful review, Applicant believes that the Examiner has misinterpreted the Miller reference. Specifically, Miller is directed to a device which teaches away from the step of mixing components prior to exiting the device of Miller. See Miller at column 2, lines 29-39 which states that to prevent clogging of the device of Miller, "there is no comingling of the solutions which form the fibrin glue upstream from the treatment site". The specification of Miller describes two parallel needles having elongated sections next to each other as shown in Fig. 2 of Miller. As such, Miller teaches away from premixing of the solutions prior to application, and claims 24 and 28-35 are therefor allowable over this reference.

In view of the foregoing, Applicant believes the pending claims to be in condition for allowance. Reconsideration and early allowance are respectfully and sincerely solicited.

If it is felt for any reason that direct communication with applicants' attorney would serve to advance prosecution of this case to finality, the Examiner is invited to call the undersigned attorney at the below listed telephone number.

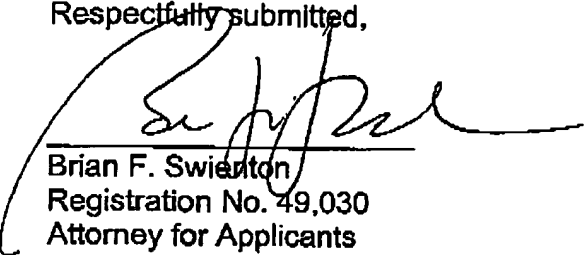
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The Commissioner is authorized to charge any fee which may be required in connection with this Amendment to deposit account No. 50-1329.

Respectfully submitted,

Dated: August 1, 2003



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